

PROVIDING THAT PER CAPITA PAYMENTS TO INDIANS MAY BE MADE BY TRIBAL GOVERNMENTS, AND FOR OTHER PURPOSES

OCTOBER 1 (legislative day, SEPTEMBER 3), 1982.—Ordered to be printed

Mr. COHEN, from the Select Committee on Indian Affairs,
submitted the following

REPORT

[To accompany H.R. 4365]

The Select Committee on Indian Affairs, to which was referred the bill (H.R. 4365) to provide that per capita payments to Indians may be made by tribal governments, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

1. On page 2, line 16, after the word "met", delete the period and add the following: "including but not limited to, the protection of the interests of minors and incompetents in such funds."

PURPOSE

The purpose of H.R. 4365, introduced by Mr. Udall, is to provide that per capita payments to Indians out of tribal trust revenue may be made by either the Secretary of the Interior or by tribal governments. By virtue of two laws enacted in 1896 and 1898, such disbursements may only be made by the Secretary of the Interior at this time. The funds which are the subject of this legislation are funds derived from sale or lease of tribal trust assets.

BACKGROUND

Section 1 of the Act of June 10, 1896 (29 Stat. 336; 25 U.S.C. 117) provides that sums of money to be paid per capita to individual Indians must be paid by Federal officials designated by the Secretary of the Interior. The Act of June 28, 1898 (30 Stat. 502) established similar provisions for tribes in Indian Territory, now Oklahoma.

Many Indian tribes have acquired the administrative, financial, and accounting capabilities to handle the disbursement of funds derived from the sale or lease of trust assets. Until recently, five or six tribes were making such disbursements to their members. A recent opinion of the Solicitor of the Department of the Interior held that tribes were not legally authorized to make these payments and the authority of the tribes was then withdrawn.

Tribes wishing to resume making these disbursements cite three reasons: (1) disbursements by the tribes has proved more expeditious than when handled by the Department of the Interior; (2) the local non-Indian community often believes that Indians cashing a Federal Treasury check are recipients of Federal welfare and resent Indians living on the Federal dole; (3) use of tribal checks rather than Federal checks will help make the local non-Indian community more aware of the economic value of the tribal community to the local economy. Additionally, tribes assert that vesting the tribal governments with authority to disburse trust revenues to their own members is consistent with the policy of self-determination.

LEGISLATIVE HISTORY

H.R. 4365 was introduced in the House of Representatives by Mr. Udall on August 3, 1982. Hearings were held by the House Committee on Interior and Insular Affairs in November of 1981. The bill was reported out of the Committee on July 22, 1982, and was acted upon favorably by the House of Representatives in July of 1982.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Select Committee on Indian Affairs, by unanimous vote of a quorum present, in an open business meeting on September 29, 1982, recommends that the Senate pass H.R. 4365, as amended.

AMENDMENT

There is one technical amendment to this bill which clarifies certain protections for minors and legal incompetents.

SECTION-BY-SECTION ANALYSIS

Section 1 provides that tribal trust funds which are to be paid on a per capita basis to tribal members may be distributed by the Secretary of the Interior or subject to his approval, by the tribe involved and that per capita shares of minors and legal incompetents shall be handled as determined by the tribal governing body.

Section 2(a) provides that funds distributed pursuant to this legislation shall not be subject to previously contracted obligations and shall be subject to the provisions of section 7 of the Judgment Distribution Act with respect to tax exemptions and eligibility for government benefits. Subsection (b) provides that nothing in this Act shall affect the provisions of the Judgment Distribution Act except that per capita payments to be paid out pursuant to that Act may be paid by the tribe as authorized by this Act. Subsection (c) provides that,

with the exception of subsection (a), nothing in this Act shall affect the Shoshone and Arapahoe Tribes of the Wind River Reservation in Wyoming which are subject to a special Act authorizing per capita payments.

Section 3(a) provides that the United States shall not be liable with respect to any tribal distribution of funds under this Act if the Secretary has approved that distribution pursuant to the terms of this Act and reasonable rules and regulations adopted to carry out this Act. Where an Indian tribe seeks and receives approval to disburse per capita payments, the Committee does not intend that the fiduciary obligation of the United States shall be a standard by which rules and regulations carrying out this Act are developed and applied. Subsection (b) provides that nothing in this Act shall otherwise absolve the United States of its trust responsibilities to Indians and Indian tribes.

Section 4 repeals section 1 of the Act of June 10, 1896, and section 19 of the Act of June 28, 1898.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for H.R. 4365, as amended, as provided by the Congressional Budget Office, is set forth below :

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 30, 1982.

HON. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washintgon, D.C.

DEAR MR. CHAIRMAN : Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 4365, a bill to provide that per capita payments to Indians may be made by tribal governments, and for other purposes, as amended and ordered reported by the Senate Select Committee on Indian Affairs, September 29, 1982.

Based on this review, it is expected that no additional cost to the government would be incurred as a result of enactment of this legislation. The bill would allow tribes to disburse per capita payments directly by tribal check. Under present procedures, checks must be drawn upon the U.S. Treasury from trust accounts.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill.

The Committee believes that H.R. 4365, as amended, will have no regulatory or paperwork impact.

EXECUTIVE COMMUNICATION

The legislative report on H.R. 4365 received by the Committee from the Department of the Interior is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., September 28, 1982.

HON. WILLIAM S. COHEN,
Chairman, Select Committee on Indian Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The following are our views on H.R. 4365, a bill "To provide that per capita payments to Indians may be made by tribal governments, and for other purposes."

We recommend that the bill be enacted, if amended as we suggest. In addition to our comments, we are advised that the Department of Justice will shortly forward a report to the Committee recommending some clarifying amendments concerning U.S. liability under the terms of this bill.

H.R. 4365 would repeal two provisions of law which currently require that per capita payments of tribal income to the individual Indians be made by officers designated by the Secretary of the Interior. H.R. 4365 would allow these payments to be made by either the Secretary or the tribal governments to which the funds involved belong.

In addition, H.R. 4365 would continue the exemption of per capita payments from liability for payments of any previously contracted obligation, now provided by the 1898 provision would be repealed by the bill. Any funds distributed per capita would also be subject to section 7 of the Indian Judgment Funds Act of October 19, 1973, which contains tax-exemption and offset provisions. Further, the bill would specify that enactment of the bill would not affect the requirements for distribution of funds appropriated in satisfaction of judgments of the Indian Claims Commission or the Court of Claims. Distribution of those funds would continue to be controlled by the 1973 Act, except that per capita payments made under a plan approved under the 1973 Act may be made by an Indian tribe if all other provisions of the 1973 Act are met. The bill would also exempt the Shoshone Tribe and the Arapahoe Tribe of the Wind River Reservation, Wyoming, from its provisions; however, the tax-exemption and offset provisions of section 7 of the 1973 Act would be applicable. These tribes are governed by a special per capita statute. Finally, H.R. 4365 would provide that the United States not be subject to any liability with respect to any distribution of funds by a tribe under the bill.

We believe that the requirements that per capita payments be distributed only by Federal officers are no longer necessary. They were enacted at a time when most tribes had no organizational means for accounting for the disbursement of funds to their members. This is no longer the case. Most tribes now prefer to handle such payments themselves and, until the Department's Solicitor determined that such practices were in contravention of the 1896 provisions, most tribes were

capably handling the distribution of per capita payments from tribal funds held by the Bureau of Indian Affairs that were transferred from the U.S. Treasury to tribal treasuries. Since the bulk of these payments are usually cashed in stores or deposited in banks off the reservation, this practice was advantageous to Indian tribes, in that the non-Indian community was aware that the per capita checks were distributions of tribal income and not gratuity payments from the Federal Government.

In light of the enactment of the Indian Self-Determination and Education Assistance Act and the Administration's policy of Indian self-determination, we believe that tribes should be permitted to make per capita distributions of funds belonging to such tribes. H.R. 4365 would provide specific authority for per capita distributions to be made by either tribal governments or the Secretary. Distribution by the Secretary, in his role as trustee, would be made should instances arise in which a tribe is not able to handle the accounting for such a distribution. Limitation of Departmental involvement in distributions would greatly reduce the burden on the Department that per capita distributions have become.

We note that section 3(b)(3) of the 1973 Act specifically provides that interests of minors and incompetents be protected. We believe the language in section 2(b) of the bill could be interpreted as allowing circumvention of that provision. To avoid this, we recommend that section 2(b) of the bill be amended to assure that the interests of minors and incompetents are protected. Therefore, we suggest that line 16 on page 2 of the bill be amended to read as follows: "met, including but not limited to, the protection of the interests of minors and incompetents in such funds."

If amended as we suggest, and after consideration of the Justice Department's views, which will be forthcoming shortly, we would recommend the enactment of H.R. 4365.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN W. FRITZ,
Deputy Assistant Secretary.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF JUNE 10, 1896 (29 STAT. 336)

* * * * *

SEC. 1. * * *

[That any sums of money hereafter to be paid per capita to individual Indians shall be paid to said Indians by an officer of the Government designated by the Secretary of the Interior.]

ACT OF JUNE 28, 1898 (30 STAT. 502)

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【SEC. 19. No payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to payment to any previously contracted obligation.】

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